HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.12095 of 2005

25-08-2005

Between:

Yerramala Ramanaiah and 32 others.

…Petitioners.

And

The Superintendent,

Prohibition and Excise,

(Ex-officio Deputy Registrar of Cooperative Societies)

Nellore, Nellore District and another.

…Respondents.

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ORDER :

The petitioners seek a writ of mandamus declaring the action of the respondents in holding the petitioners as ineligible voters under the provisions of the A.P. Cooperative Societies Act, 1964 (for brevity 'the Act') and the Rules made thereunder and consequently direct the second respondent to include their names in the voters list of Chittamuru Toddy Tappers Cooperative Society(TCS), Nellore District.

This Court while admitting the writ petition granted interim orders. Though interlocutory applications are coming up for consideration, the matter is heard finally with the consent of the parties and is being disposed of.

The petitioners, who are 33 in number, were the members of Toddy Tappers Cooperative Soceity(TCS), Chittamuru, Nellore District since 1998. The Managing Committee of the said TCS deleted the petitioners from the roll of the members by reason of which they could not participate in the affairs of the society. Be that as it is, the petitioners made a representation to the Registrar of Cooperative Societies, the Superintendent of Prohibition and Excise, first respondent herein. The Station House Officer, Vakadu, conducted an enquiry into the matter and submitted a report to the first respondent that the Managing Committee of the TCS has committed irregularities by deleting the existing members from the TCS in contravention of the provisions of the Act. The first respondent considered the representation of the petitioners in the light of the report submitted by the Station House Officer, Vakadu and directed the Chairman of the TCS to admit all the 33 petitioners as members. Accordingly they were re-admitted as members of the society on 8-12-2004.

At the time of elections to the TCS, it appears, the names of the petitioners were not included purportedly for the reason that they did not have the qualifications as per Section 25(1-A) (c) of the Act read with Rule 18(c) of the A.P. Cooperative Societies Rules, 1964 (for short 'the Rules). On this cause of action, the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

It is contended that by reason of re-admission with effect from 8-12-2004 the petitioners are deemed to be the continuous members of TCS since their admission in 1998, and therefore, they do not incur any disqualification under Section 25(1-A) of the Act read with Rule 18(c) of the Rules.

The writ petition is opposed by the respondents. When the matter was heard earlier, learned counsel for the petitioners brought to the notice of this Court the Government Notification vide G.O.Ms.No.223, Agriculture & Cooperation (Coop.IV) Department, dated 27-6-2005 whereby and whereunder Rule 18(c) of the Rules was amended substituting with another Rule to the effect that all Members of the society for a continuous period of thirty days would be eligible to contest the election or to vote in the election. However, learned counsel could not place before this Court any amendment to Section 25(1-A) of the Act. Therefore, this Court has issued notice to the learned Government Pleader for Agriculture and Cooperation Departments.

The learned Government Pleader appeared on Court notice and placed before this Court the A.P. Cooperative Societies (Amendment) Act, 2005 (Act No.6 of 2005) *inter alia* amending certain provisions of the Act including Section 25(1-A) of the Act. He also placed before this Court, the notification in G.O.Ms.No.223, dated 27-6-2005, which was come into force on 27-6-2005.

Prior to Amendment Act No.6 of 2005, Section 25 (1-A) reads as under.

"25.Vote and manner of its exercise:-

[(1-A)A member of a society shall be eligible to exercise the right to

vote only if he:-

a. contributes a minimum share capital as may be prescribed;

b. deposits a minimum thrift in a year as may be prescribed;

c. is a member of the society for a continuous period of twelve months;

d. is not in default in the payment of any amount due in cash or kind to the society for such period as may be prescribed.]"

After the Amendment Act No.6 of 2005, Section 25(1-A) of the Act reads as under.

[(1-A)A member of the society shall be eligible to exercise the right to vote only if he:-

a. contributes a minimum share capital as may be prescribed;

b. omitted by Amendment Act No.6 of 2005;

c. is a member of the society for a continuous period as may be prescribed;

d. is not in default in the payment of any amount due in cash or kind to the society for such period as may be prescribed.]"

As per Section 2(l) of the Act, 'prescribed' means prescribed by rules made under this Act. In exercise of the Rule making power under Section 130 of the Act,

the Government amended the Rules also whereby and whereunder Rule 18(c), which is referable to Section 25(1)(c) is now amended. As per the amended Rule 18(c) of the Rules, unless and until a person is a member of the society for a continuous period of 30 (thirty) days is not eligible either for contesting the elections or voting in the election. The petitioners are admitted or re-admitted as members of the society pursuant to the proceedings of the first respondent on 8-4-2004, and therefore, there cannot be any disqualification operating against them.

It is brought to the notice of this Court that the election notification was issued on 26-5-2005. By reason of the interim orders passed in this case, the respondents were precluded from proceeding any further pursuant to the proceedings of the Election Officer-cum-Prohibition and Excise Superintendent whereunder the provisional voters list was published. In that view of the matter, this Court is not able to appreciate the action of the respondents in issuing the Notification especially when a writ petition is pending before this Court. Ordinarily, when the matter is subjudice, and any public authority takes any action, the same shall have to be ignored. Applying the principle, this Court holds that the election notification issued by the second respondent while the matter is pending before this Court is of no consequence.

Accordingly the writ petition is allowed directing the respondents to include the names of the petitioners in the voters list and conduct elections to the TCS in accordance with law. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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(V.V.S.RAO, J.)

25-08-2005

Msr.

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